


From: jagbell <jagbell@nyc.rr.com>
Subject: **Hearing Access Program-FCC-Captioning**
Date: April 21, 2006 5:07:37 PM EDT
To: Jonathan.Adelstein@fcc.gov, Scott.Bergmann@fcc.gov, Rudy.Brioche@fcc.gov, Michael.Copps@fcc.gov, Monica>Desai@fcc.gov, Heather.Dixon@fcc.gov, Aaron.Goldberger@fcc.gov, Kevin.Martin@fcc.gov, Jessica.Rosenworcel@fcc.gov, Dana.Shaffer@fcc.gov, Deborah.Tate@fcc.gov
 3 Attachments, 1.7 KB [Save](#) [Slideshow](#)

The following article on Indecency Penalties in Sunday's *New York Times* is interesting since the networks are requesting the FCC to form clear standards for indecency. This caught my attention since in NAB's Comments in response to to The Petition for Rulemaking: in the Matter of Closed Captioning of Video Programming, NAB claimed that "there is no evidence that regulation will lead to improved standards (for captioning)." It is odd to me that they feel that standards don't help but yet they want them for indecency issues.

The shift in position is because penalties were imposed for televising indecent programming. Once penalties are in place, the networks want standards so that they are not fined. Without penalties, they are comfortable with their own judgment and don't want the regulations. Therefore, the FCC should give the broadcasters what they want, "clear and consistent standard(s) for determining what (is appropriate captioning and what) the government intends to penalize." These standards should include those delineated in The Petition as well as when captioning live is appropriate.


It has recently come to my attention that shows such as Oprah are captioning live even though the show is already taped, resulting in numerous mistakes and time delays, rather than captioning in advance with no delays or mistakes. They say they just can't get the tape ready for captioning prior to broadcast. Other shows, such as The Apprentice are claiming to be afraid of "confidential" information leaking to the public. Production companies are making arbitrary decisions about captioning that benefit them but yet affect millions of people who have no choice but to rely on captioning. We are seeking the FCC's help in correcting this market failure.

Sincerely,

Janice L. Schacter

TV Networks Sue to Challenge F.C.C.'s Indecency Penalties

- [E-MAIL](#)
- [PRINT](#)
- [REPRINTS](#)
- [SAVE](#)

ARTICLE TOOLS
SPONSORED BY 

Please note, all words in red were highlighted for emphasis.



By [STEPHEN LABATON](#)
Published: April 17, 2006

WASHINGTON, April 16 — After years of coming under assault in Washington on accusations of indecent programming, the television networks have decided to fight back.

[Skip to next paragraph](#)

With no allies among either the Democrats or the Republicans on the [Federal Communications Commission](#) nor any significant ones in Congress, the four broadcast networks, joined by the [Hearst-Argyle Television](#) group of stations, embarked late last week on a low-risk strategy of turning to the courts.

There, they are hoping to find a solid majority — perhaps ultimately on the Supreme Court — of liberal and libertarian judges who are more sympathetic to their First Amendment arguments.

But the fight is certain to take more than a year, and in the meantime, the networks can expect to face a hostile commission and Congress and an uncertain environment for challenging the rules with new and risqué programs.

The regulators and lawmakers have been lobbied hard by some advocacy groups that generated hundreds of thousands of complaints about programs with coarse language and explicit themes.

Late last week, the networks filed lawsuits in federal appeals courts in Washington and New York to challenge indecency rulings against CBS, ABC and Fox involving coarse language. The rulings they are seeking to overturn involve obscenities that were used on the CBS news program "The Early Show," "Billboard Music Awards" on Fox and "N.Y.P.D. Blue" on ABC. The networks maintained that many of the remarks that were found to have violated the indecency rules were blurted out spontaneously, although the ones at issue in "N.Y.P.D. Blue" had been scripted.

"The F.C.C. overstepped its authority," the networks said in a joint statement Friday, "in an attempt to regulate content protected by the First Amendment, acted arbitrary and failed to provide broadcasters with a clear and consistent standard for determining what content the government intends to penalize."

NBC joined the lawsuits, although they do not challenge sanctions against any of its programs. The network, a unit of General Electric, has been seeking a reversal of a complaint against it by the F.C.C. for an obscenity uttered by the U2 singer Bono during the Golden Globe Award ceremony three years ago.

The New York Times Company is not named as a party in the lawsuits, but it owns nine network-affiliated television stations that could be affected by the outcome of the cases.

The lawsuits were filed a month after the commission issued about \$4 million in fines, the first indecency actions under the leadership of the agency's new chairman, Kevin J. Martin. Those fines included a record \$3.6 million against 111 television stations that broadcast an episode of "Without a Trace," a CBS program, in 2004. The agency said the show suggested that its teenage characters were participating in a sexual orgy.

The networks are hoping that short of an outright victory, the lawsuits can at the very least result in differing opinions in different appeals courts, the kind of split that could attract the attention of the Supreme Court.

The networks are certain to make the case that the indecency rules are no longer relevant in a world where most viewers receive paid programs from cable and satellite television services, along with a proliferation of offerings from the Internet, that are accorded significantly more First Amendment protection.

"One of the strongest arguments for the networks is the changed circumstances and the pervasive availability of this programming on cable and the Internet," said Bruce W. Sanford, a partner at the law firm of Baker Hostetler who has represented the networks in other indecency cases but is not involved in those filed last week. "It makes the F.C.C.'s claims almost quaint."

Mr. Sanford said that another strong argument for the networks would be the inconsistent nature by which the F.C.C. has applied the obscenity rules — in some cases imposing fines and in others finding violations but not imposing penalties.

"The decisions have been so arbitrary and left the networks without any straight, bright lines," he said.

Commission officials said, however, that a line of Supreme Court decisions going back to the "seven dirty words" indecency case involving the comedian George Carlin and subsequent federal court decisions give the agency the authority to regulate the content of programs broadcast over the public airwaves.

They said that F.C.C. indecency rulings were consistent and tailored to the set of circumstances of each case. They also said they would review a request by CBS to reconsider their March ruling on the show "Without a Trace," although there is virtually no chance of the commission's changing its mind.

According to an agency spokeswoman, Tamara Lipper, the episode of 'Without a Trace' that the commission found to be indecent "depicts a teen orgy as well as a teenage girl straddling and apparently engaging in intercourse with one boy while two others kissed her breast."

In addition, she said: "In its recent order, the commission again rejected CBS's argument that the broadcast of the Super Bowl XXXVIII halftime show was not indecent. That argument runs counter to commission precedent and common sense. The commission, however, will review any request for reconsideration." The halftime show, in

February 2005, became a subject of controversy after the singer Janet Jackson's breast was briefly exposed.

The Parents Television Council, an organization that has lobbied for more stringent penalties on obscene programs, denounced the lawsuits.

"The broadcast networks are spitting in the faces of millions of Americans by saying they should be allowed to air the f-word and s-word on television," said L. Brent Bozell III, the president of the council. "This suggestion by the networks is utterly shameless."

[More Articles in Business »](#)